

## **AGRICULTURAL WAIVER STATUS REPORT**

### **Background/Discussion:**

The California Water Code authorizes State and Regional Water Boards to conditionally waive waste discharge requirements (WDRs) if this is in the public interest. The Regional Water Boards have issued waivers for over 40 categories of discharges over the years. Senate Bill 390, signed into law on October 6, 1999, required the Regional Water Boards to review their existing waivers and to renew them or replace them with WDRs. To comply with SB 390, the Regional Water Boards adopted waivers to regulate most of the categorical discharges. The most controversial waivers were for discharges from timber harvesting and agricultural operations.

The Central Coast, Central Valley, and Los Angeles Water Boards have adopted conditional waivers for agricultural discharges. The agricultural waivers use different regulatory models, are conditional, and comply with SB 390. The Regional Water Boards are making extensive enrollment, education, and public outreach efforts in these regions. Regions 1, 2, 6, 7 and 8 have no immediate plans to adopt conditional waivers for agricultural discharges, but may do so eventually to implement TMDLs.

To implement the waiver program, the state legislature included 22 positions in the state budget for the 2004-2005 fiscal year and specified that the funding for the new positions would come from new waiver fees. State Water Board staff has developed a fee schedule for agricultural waivers and began invoicing in December 2005.

Tasks State and Regional Water Board staffs are performing include the development of waivers, development of waiver fees, review of waiver applications, review of monitoring plans and reports, environmental and water quality assessment, inspection, coordination with other agencies, renewal of waivers, outreach, and information management. If needed, enforcement actions may be taken in the future.

### **Status of Regional Programs**

#### **Region 3 - Central Coast Water Board:**

The Central Coast Water Board enrollment deadline for the agricultural waiver was January 1, 2005. Approximately 1300 individual ranches have enrolled, representing about 236,000 acres throughout the region. This represents nearly 55% of the estimated 434,000 irrigated acres (about 50% of the Regions 2500 growers) and is in line with staff's target of 50% initial enrollment. This figure does not include those who used the on-line filing system. Over 200 people enrolled using the on-line system, in spite of the delay in deployment. Regional Board Non-Point Source staff participated in numerous technical assistance and waiver enrollment workshops prior to the enrollment deadline. Water Board staff responded to more than 600 waiver-related phone calls and emails, answering questions about waiver requirements, the enrollment process, and the on-line enrollment system. Staff also did a mass mailing of 2500 flyers to inform the agricultural

community of the new requirements. The agricultural industry throughout the region did a tremendous amount of outreach, putting on more than thirty workshops to assist farmers in completing farm plans and enrollment forms. Several groups did large mailings to their members, providing information on the waiver, and, in some cases, enrollment forms.

More than 200 enrollees used the on-line system, which was in line with expectations, especially considering that the system did not become available until the second week in December. Although the usage represents only about 8% of potential enrollees, the system will provide a valuable tool for managing large amounts of data. All hard copy enrollment forms are being entered into the system. In the future, enrollees will be able to access and update their information, and submit annual reports and biannual checklists electronically.

Enrollments are still being received and staff will continue with outreach efforts to meet the longer-term goal of 80% enrollment by the end of the first year. In the future, Regional Board staff will also begin pursuing enforcement actions against non-filers as necessary.

#### **Region 4 - Los Angeles Water Board:**

Los Angeles Water Board staff has developed a Conditional Waiver for Irrigated Lands, including a draft tentative order, two draft monitoring and reporting programs – one for individuals one for groups, an initial study and CEQA checklist. Additional drafts of documents to support the waiver have also been developed, including notices of intent, receiving water limits, lists of receiving waters, have also been prepared.

The working drafts have been developed in collaboration with local agricultural and environmental stakeholders over an 8-month period. A series of five meetings were held in which stakeholders reviewed and commented on the working drafts of the waiver. These meetings have resulted in revisions to the drafts to reflect the unique conditions of agriculture, regulatory framework, and environmental priorities in Region 4.

In addition to participating in the development of the Waiver, stakeholders have participated by informing the grower community in Ventura County of the Waiver. The Waiver was presented to the agricultural community at a meeting sponsored by the Farm Bureau of Ventura County in December 2004 and subsequent meetings in 2005. Approximately 200 growers attended the meetings.

Los Angeles Water Board staff have finalized and the Board adopted the waiver in November 2005.

Below is some further background information on Agriculture in Region 4:

Ventura County is among top ten agricultural producers in California at \$1054 million for 2004 (6 other counties are in Region 5, and 1 other is in Region 3 and California total exceeds all other states)

Average acreage per owner is comparable but smaller at 50 acres (Region 4 67 acres/grower, Region 5 is 93 acres/grower, Region 3 is 240 acres/grower) Total acreage is smaller at 263,000 acres, but return on investment per acre is higher than Region 5 (As per California Farm Bureau, annual gross per acreage is \$ 4000 in Region 4 and \$3800 in Region 5.)

The number and turnover of crop types is large in Region 4 because of the large number of nurseries, truck farms and small acreage use.

Agriculture has developed a collaborative culture because of extensive utilization of land adjacent to urban centers. An example is that 1000 of acres of nurseries in Los Angeles County line on power line right of way. The result is a community of growers with leadership and experience in successful remediation of water quality problems and the infrastructure to change practices when necessary. Examples are the Ventura County Farm Bureau-led program for white fly eradication and management practice modification for Malathion pesticide application.

State monies spent on Region 4 are likely to provide rapid explicit results and statewide leadership because (1) the assessment of water quality problems related to agriculture is extensively developed due to the physical proximity of agriculture and urban lands. Over 300 303(d) impairments attributed to agriculture are already being addressed by a consent decree driven TMDL process which requires rapid results. In contrast, Region 5 has only 60 impairments and fewer EPA driven time constraints. (2) Region 4 hosts a higher number of crop types than Region 5 in conjunction with more proximity to other land use types ensuring that the range of management solutions will be larger.

### **Region 5 - Central Valley Water Board:**

In December 2002, the Central Valley Water Board adopted new conditional waivers for discharges of irrigation tailwater and storm water runoff from irrigated lands. These conditional waivers were replaced in July 2003. The Conditional Waivers cover discharges of waste from irrigated lands. Irrigated lands include irrigated pasture, regular cropland (including field and row crops, orchards, vineyards, and rice), commercial nurseries and nursery stock production, managed wetlands such as wildlife refuges and duck clubs, and greenhouse operations with permeable floors that are not regulated under other permits.

In July 2003 the Board adopted the Conditional Waivers. One Conditional Waiver is for Coalition Groups or other entities which form on behalf of individual Dischargers, and a second Conditional Waiver is for Individual Dischargers. Both of these waive the requirement to submit a Report of Waste Discharge and filing fees and to obtain Waste Discharge Requirements for dischargers in this category.

Both conditional waivers have a Monitoring and Reporting Program, as required by the Water Code, to measure compliance with the waivers' terms and conditions, and both expire on December 31, 2005.

The Irrigated Lands Conditional Waiver Program is an interim program. Since the Board adopted the first Conditional Waiver in December 2002, staff has supported and maintained an involved, open public process throughout the evolution of this Program.

There have been many workshops and meetings with stakeholders, such as the coalition groups, farm bureau, agricultural commissioners, Resource Conservation Districts, Water Districts, environmental interests such as Deltakeeper, and other interested stakeholders in the agricultural community. This is also evident with the Technical Issues Committee and Public Advisory Committee. Staff has worked diligently to review and evaluate data collected during the program from the coalition groups, individual dischargers, water districts, UC Davis Cooperative Extension, State Board Programs, and Regional Board Programs to further determine the needs of the program. The changes proposed to the conditional waivers are based on this combination of the public process, evaluation of the data, and requirements of the Water Code. The idea of this interim program is to gather sufficient data and information to develop and support a long-term regulatory program. An Environmental Impact Report is underway which will further the development of a long-term regulatory program.

Since April of this year, staff has worked on the renewal of the 2003 Conditional Waivers through extensive public outreach and review and evaluation of a significant amount of data. Based on this, staff proposed revisions to the Conditional Waivers and Monitoring and Reporting Programs to clarify definitions, improve readability, and be consistent with other Regional Boards' Ag Waiver programs and with the statewide Non-Point Source Implementation and Enforcement Policy.

These revisions were embodied in the tentative renewal documents, which were released on October 5, 2005 for a 30-day public comment period. Beginning two weeks after the start of this 30-day period, staff conducted four public workshops, including one before the Central Valley Water Board on October 20, 2005, to explain the changes staff propose in the Program and listen to comments on the tentative renewal documents. The comment period ended on November 4, 2005 and numerous comments were heard. Based on the comments, staff prepared additional revisions, and on November 10, 2005 and sent out the proposed orders in the agenda package for the Board's November 28, 2005 adoption hearing. At the November 28, 2005 meeting, the Board acted by providing a 6-month renewal of the Irrigated Lands Conditional waiver that was set to expire on December 31, 2005. The Central Valley Water Board will revisit the issue of adopting a revised conditional waiver at its June 2006 Board meeting.

For additional information on the Irrigated Agricultural Discharge Waiver Program, contact Mr. Johnny Gonzales of the State Water Board at 916-341-5510 or [jgonzales@waterboards.ca.gov](mailto:jgonzales@waterboards.ca.gov)